

Strengthening Children's Rights in the Constitution

Second Edition June 2010

Where can I learn more?

On the Children's Rights Alliance web site you can access information on the UN Convention on the Rights of the Child, download our submissions to the Government and Joint Committee on the Constitutional Amendment on Children, and listen to our Children's Rights Podcast Series. Go to www.childrensrights.ie today!

Second Edition: June 2010

First Edition: October 2009

The Children's Rights Alliance is a coalition of over 90 non-governmental organisations (NGOs) working to secure the rights and needs of children in Ireland, by campaigning for the full implementation of the UN Convention on the Rights of the Child. It aims to improve the lives of all children under 18, through securing the necessary changes in Ireland's laws, policies and services.

This is an in-house publication.

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Our vision is that Ireland will be one of the best places in the world to be a child

www.childrensrights.ie

Why Do We Need to Change the Constitution?



The Irish Constitution was written in 1937, at a time when children were 'seen and not heard' and when, for example, it was the norm for teachers to physically discipline children and for children

to be seen as mere possessions of adults.

The public was rightly shocked and angered by the findings of the Ryan Report, published in May 2009, which exposed systematic abuse of children living in institutions throughout the country, spanning half a century. The societal attitudes that allowed this abuse to continue must be challenged and overcome.

Today, society views children differently; we appreciate that children have rights and that they should be respected as individuals in their own right. The Children's Rights Alliance, a coalition of over 90 non-governmental organisations (NGOs) working for the rights and needs of children in Ireland, believes that the Constitution needs to reflect this view of children.

Strengthening children's rights in the Constitution would do just that; it would also reinforce this new societal view of children and set down a marker for us all: that every childhood counts and we have a duty to respect and protect the rights of children.

What is the Irish Constitution?

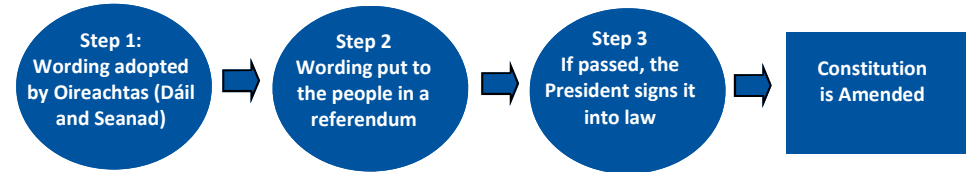
The Constitution of Ireland (*Bunreacht na hÉireann*) is the fundamental law of the country, and came into effect on 29 December 1937.

The then Fianna Fáil government, led by Éamon de Valera, commissioned the current 1937 Constitution as a replacement for the 1922 Constitution of the Irish Free State. As well as establishing an independent republic, the current Constitution establishes a system of representative democracy, together with a popularly elected president; separate roles for the Oireachtas, the Government (the Cabinet) and the Judiciary; and it guarantees a range of basic personal rights, ranging from freedom of expression to the right to the protection of private property.

The official text of the Constitution has 50 articles, which can only be changed by referendum. Twenty-eight referendums have taken place to date, on issues ranging from divorce to membership of the European Union. Twenty-two of the 28 referendums have been successful; most recently in relation to the Lisbon Treaty in October 2009.

How is the Constitution Amended?

Any part of the Constitution can be amended. The proposed wording of the amendment must first be adopted by both houses of the Oireachtas, before a referendum can be put to the People. If the People pass the referendum, the constitutional amendment comes into effect once the President of Ireland signs it into law.



Joint Committee on the Constitutional Amendment on Children

The Joint Committee on the Constitutional Amendment on Children (chaired by Deputy Mary O'Rourke) was established in November 2007 to deepen political consensus on the wording for a constitutional amendment to strengthen children's rights. In all it met for a total of 27 months (despite an original timeline of four months). The Committee published three reports. Its third and final report published on 16 February 2010 contained all-party agreement on a proposed wording for an amendment to strengthen children's constitutional rights. The achievement of an all-party consensus is significant.

Will there be a Referendum?

We are now awaiting a decision from Government on whether, or not, they will hold a referendum on children's rights. Will we be asked to vote on the all party wording proposed by the Joint Committee? No decision has yet been made.

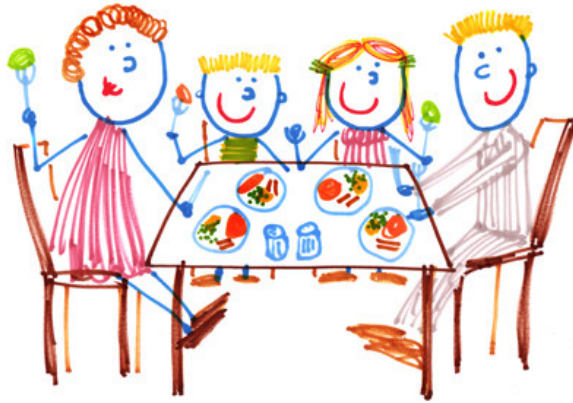
To aid the Government's decision-making, senior civil servants are examining the implications of the Committee's proposed wording for each Government Department. In addition, the Attorney General is considering the legal and constitutional ramifications of the Committee's report. His input will be critical to the Government's decision.

The Alliance will continue to call on the Government to act on the Committee's recommendations and set a date for a referendum to strengthen children's rights. On a positive note, Budget 2010 earmarked €3 million for the holding of a children's rights referendum in 2010.

Does Giving Children More Rights Mean Parents Have Fewer Rights?

The infamous *Kilkenny Incest Investigation*, into a deplorable child abuse case, recommended that: “... *consideration be given by the Government to the amendment of Articles 41 and 42 of the Constitution so as to include a statement of the constitutional rights of children. the very high emphasis on the rights of the family in the Constitution may consciously or unconsciously be interpreted as giving a higher value to the right of parents than to the rights of children.*”

Catherine McGuinness SC, Report of the Kilkenny Incest Investigation, 1993.



Children’s rights and parents rights are not mutually exclusive; they are inextricably linked. Strengthening children’s rights in the Constitution is not about giving children the right to divorce their parents. In the UN Convention, it is stated clearly that a child’s best interests are served by being with their parents wherever possible, and that a child’s parents have ‘primary responsibility’ for their upbringing. Parents will regularly do all that they can to uphold the rights of their children; they will knock on as many doors as necessary to ensure that their children’s needs are met and that their children get the services they deserve.

Unfortunately, not all children are as fortunate. And when parents put their children in dangerous situations, we, the public, expect the State to act. A robust amendment would, in these rare occasions, help ensure that the State can take action and give the necessary support that these children and families so desperately need.

Will This Really Make a Difference?

A robust children’s rights amendment will ensure that children in Ireland benefit in real and concrete ways. Strengthening children’s rights in the Constitution – the fundamental law of the land – will mean that children, at long last, will be visible in the Constitution, in their own right.

The amendment could allow the State to take proper account of children’s rights and needs, to put their best interests at the heart of decisions affecting children, and to listen to the voice of the child. It could also acknowledge a child’s right to know their identity and to be protected from abuse.

A children’s rights amendment could provide the State with the necessary tools to develop the very best care, adoption and child protection systems. For example, at present, the Constitution blocks the adoption of children whose parents remain married. This affects several hundred children currently in long term foster care, who have grown up with little or no regular contact with their married birth parents and who are not entitled to be adopted.

A children’s rights amendment could create an equal level of protection for all children, regardless of the marital status of the child’s parents. The amendment could empower the State to intervene in a proportionate way to protect children and this would allow for the provision of supportive interventions.

Each and every day, children are badly served by the current Constitution. Vulnerable children depend on adults to safeguard their rights and ultimately their future. But without a constitutional amendment, the State’s hands are tied.



What Does the UN Convention on the Rights of the Child Have to do with the Irish Constitution?

The United Nations Convention on the Rights of the Child (UN Convention) is a comprehensive, internationally binding agreement on the rights of children (usually defined from birth to 18 years of age), adopted by the UN General Assembly in 1989. It incorporates children's:

- participation rights (such as respect for the views of the child);
- survival and development rights (such as the right to housing, health care and education); and
- protection rights (from abuse and exploitation).

Ireland ratified the UN Convention on the Rights of the Child) in 1992; the USA and Somalia are the only states yet to ratify it. The UN Committee oversees States' progress in implementing their recommendations under the UN Convention. In 1998 and 2006, the Committee recommended that Ireland incorporate the principles of the UN Convention into its domestic law. Ireland cannot incorporate some of the UN Convention provisions until it reforms its Constitution.



I would say there can be little doubt that the silence of the Constitution in relation to children has had considerable impact on law making, on Government policy and on the practice of social work and among other caring professions. And so it seems that there is a pressing need to express constitutionally, the Convention of Children's Rights in the Constitution.

Lucy Smith, Rapporteur for Ireland, UN Committee on the Rights of the Child, State Hearing - September 2006

Is This Just Political Correctness Gone Mad?

Calls for a constitutional amendment are not new: it was first discussed in the Oireachtas over 30 years ago. Fresh impetus to the debate came on 3 November 2006, when the then Taoiseach, Bertie Ahern TD, announced his intention to amend the now outdated Constitution to acknowledge the rights of children. All of the main political parties have also committed to making children visible in the Constitution in each of their 2007 General Election manifestos.

Many professionals working with children, including the legal profession, also support the need for constitutional reform for children. Over the past 20 years, a number of court cases and inquiries have highlighted how the current Constitution is failing to protect children and their rights.

It is not political correctness gone mad: it is the right thing to do.

"We believe the fundamental law of our land should fully reflect our commitment to value and protect childhood. That is why we have proposed the inclusion in our Constitution of a new dedicated Article on Children."

**Programme for Government
(Fianna Fáil and Green Party coalition)**

"Labour shares the commitment of all political parties to put to the people, as a priority, an appropriate constitutional amendment to enshrine in explicit form the rights of the child."

Labour Party Manifesto

"Amend the 1937 Constitution to expressly recognise children's rights and to provide that the State must guarantee that in all actions concerning children undertaken by or on behalf of the State the best interests of the child shall be the primary consideration"

Sinn Fein Manifesto

"We will ensure that the issue of children's rights is dealt with, by holding a referendum amending the Constitution to take account of changes in society and children's rights."

Fine Gael Manifesto